

MINUTES
(Subject to approval by the Committee)
Federal Lands Interim Committee
Thursday, September 11, 2014
6:30 P.M.
Elks Lodge
St. Maries, Idaho

The meeting was called to order at 6:30 p.m. by Cochairman Senator Chuck Winder. Other committee members present included Cochairman Representative Lawrence Denney, Senator John Tippetts, Senator Sheryl Nuxoll, Representative Stephen Hartgen, Representative Terry Gestrin and Representative Mat Erpelding. Senators Bart Davis, Senator Michelle Stennett and Representative Mike Moyle were absent and excused. LSO staff members present were Mike Nugent and Toni Hobbs.

Community members present included: Hari Heath, Republican Liberty Caucus; Renee' and John Walters; Ken DeVries; Paul Agidius; Marilyn Baxter; R.J. "Dick" Harwood; Larry Domingo; Jeff Shippy; Gary Yergler; Larry Yergler, Shoshone County Commissioner; Wayne and Diane McCarroll; Daniel McHenry; Albert and Cheryl Halverson; Brian Primer; John Metzler; Rik Hansen; Steve Cuvala; Richard Furmakan; Ken Doupe'; John and Laurabelle Minser; Russ Lowry; Sandy Podsaid; Terry Burger; Earl Daniels; Pam Secord; Del Rust; Dale Hawkins; Beverly and Jim McCuay; Pete Sonnentag; Wes Goldwin; John Ferris, St. Maries Forestry; Eric Mesaw, Idaho Department of Lands; Senator Dan Schmidt; Cindy Newsom; Representative Cindy Agidius; Judd Wilson, St. Maries Gazette Record; Susie Patterson; Bud Stowell, Bill Grendynski; William Shields; Rachelle Johnson; Cedric and Sue Clark; and Phil Lambert, Benewah County Commissioner.

After committee introductions, Senator Winder asked for a moment of silence for the victims of the September 11, 2001, attacks.

Mike Nugent, LSO Staff, gave background information on the committee's charge. He explained that the purpose of interim committees is to give the Legislature more time to study a subject that is too complex to complete during the legislative session. This committee is a two-year committee that ceases to exist on November 30, 2014. In order to continue, the next Legislature will have to pass a new resolution or put something in statute. The committee was formed pursuant to the adoption of [HCR21](#) and [HCR22](#) during the 2013 Legislature. He also explained that all information from past meetings is available on the LSO website at: www.legislature.idaho.gov.

Senator Winder explained that this is going to be a long-term process that will probably require a recommendation for some type of land commission to pursue the opportunities that are out there regarding federal land transfers. He noted that a lot of other states are interested in the issue as well and that it is a bipartisan issue across the West. **Senator Winder** noted that it is not easy and if the state got all of the federal land back, there would still be endangered species and EPA issues to deal with. He added that the committee wanted to reach out to communities that are impacted by these federal regulations and hear concerns and stories about how they are impacted.

Written testimony was also accepted by the committee and that is posted at:
<http://www.legislature.idaho.gov/sessioninfo/2014/interim/lands.htm>

HARI HEATH

Hari Heath spoke in favor of the transfer of lands to the state. He spoke from an article he wrote titled "The Big Lie; Federal Ownership of Public Lands" that was printed in the August 2001 issue of the Idaho Observer. He stated that with a series of unconstitutional takings, beginning almost a century ago, the federal government now claims to own almost two-thirds of Idaho. Most of that "ownership" is claimed as lands "administered" by the Forest Service. According to **Mr. Heath**, this is one of the lies that, having been told often enough, is now believed to be true. We want to

believe in the sanctity of our national parks, wilderness areas and forest lands. They are a wonderful public resource. However, the truth is, the federal government is constitutionally prohibited from owning this type of property within a state.

Mr. Heath explained the following constitutional facts of life:

- The founders of America drafted the United States Constitution to form a limited federal government. It was designed to take care of only those things which were truly our national business. The state governments or the people were to keep all other powers. Article I, Section 8, Clause 17, offers the only provision in the federal Constitution for federal ownership of land. It provides for the creation of Washington, D.C., as the seat of the federal government and allows the federal government to purchase lands in a state with "... the consent of the legislature of the state in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings." This is the only kind of property that the federal government is empowered to own in a state. The federal government cannot own forest lands. Why? Because no such power has ever been delegated to it and the Tenth Amendment prohibits the federal government from assuming any power which has not been delegated to it by the Constitution: "The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people." This is the first constitutional fact of life preventing federal public land ownership within a state.
- In 1890, Idaho was admitted as a state in the union and its government was formed by the state Constitution. Section 4, Article X, of the Idaho Constitution says "All property and institutions of the territory, shall, upon the adoption of the Constitution, become the property and institutions of the state of Idaho." This second constitutional fact of life conveyed the territorially held lands to the new state. "The people," at least the 64 people who signed the Idaho Constitution, gave up their interest in the public lands in Section 19, Article XXI. That section states in part: "And the people of the state of Idaho do agree and declare that we forever disclaim all right and title to the unappropriated public lands lying within the boundaries thereof ... and until the title thereto shall have been extinguished by the United States, the same shall be subject to the disposition of the United States"
- Those 64 people, acting as a constitutional convention for Idaho, essentially quit claimed "the people's" interest in the public lands. It is important to remember that the Idaho Constitution was signed at the convention in August of 1889. Idaho was still a federal territory then. The title to the unappropriated lands remained with the federal government until Idaho became a state the following year. Many things happened when Congress passed the Idaho Admission Act in 1890. Idaho was admitted into the union as a state on an equal footing basis with the other states. Congress also "accepted, ratified and confirmed" the Idaho Constitution in the Idaho Admission Act. Some public lands were specifically appropriated in the Admission Act, as state endowment lands for schools and other state purposes. The other remaining public lands were not specifically granted to the state for particular purposes.

Mr. Heath went on to say that as a state, Idaho's relationship with the federal government also changed. Once Idaho was no longer a federally-held territory, the federal Constitution imposed new limitations on the federal government. They were now prohibited from owning anything except "other needful buildings" and certain military property in the new state, initiating the first constitutional fact of life. When Congress accepted, ratified and confirmed the Idaho Constitution, they both conveyed any unappropriated lands held as property of the Idaho Territory to the new state of Idaho and released any interest "the people" may have had in those lands to the state, giving the state clear title to the unappropriated lands. This "extinguished" the United States title to those lands since the federal government was now prohibited from owning them and "forever disclaimed" the people's interest in the unappropriated public lands, bringing the second and third constitutional facts of life into force and effect.

In conclusion, **Mr. Heath** said that Idaho cannot give wilderness land to the federal government, INL or to the national parks, it belongs to Idaho.

JOHN WALTERS

John Walters spoke in favor of the transfer in order to get the land back to create jobs in the area and to help education. He spoke about the number of mills that used to exist in northern Idaho. He said there used to be a lot of jobs available. He noted that lack of jobs was one reason there were not a lot of young people at the meeting. He noted that 25% of the timber sales used to go to the schools and roads. **Mr. Walters** added that the small school district in Avery was one of the richest districts in the state. He said that the Forest Service is not logging; everything is being managed as wilderness.

Mr. Walters commented that when Idaho became a state, everything within its borders was the property of the state. He agreed with **Mr. Heath** about the constitutional part of this issue. In his opinion, Idaho never gave the land to the federal government and it has been mismanaged by the federal government for years. He said there is no reason that Idaho should not be an extremely wealthy state.

KEN DEVRIES

Ken DeVries spoke in favor of the transfer to the state. He commented that there will probably be testimony that says this has never been done and it is impossible. He said that prior to statehood, Florida, Alabama, Missouri, Arkansas, Indiana and Illinois all had up to 90% of their territory owned by the federal government. Today the federal government owns less than 5% of that land. He asked how did that happen. In answer to his own question, he said that the states got together and refused to take no for an answer. He added that some used the argument that the Civil War settled the issue of state's rights by saying that the federal government is supreme. He noted that North Dakota entered the union in 1889 and today the federal government only owns 3% of that land. Idaho entered the union in 1890 and the federal government currently owns 62% of our land. The enabling acts of the two states are nearly identical so he asked why can't Idaho get its land back.

LARRY DOMINGO

Larry Domingo is a miner, landowner and recreationist from Shoshone County. He said that many citizens do not agree with the Forest Management Plan that is currently in effect. He said that citizens feel like they do not have much say in what is happening. As a miner, the EPA has set up prohibitions for pursuing what has been one of the primary industries in the county. He also noted that citizens are now unable to access areas they have used their entire lives due to trail management. He also mentioned that many citizens also worry about access to water and water rights. In his opinion, the cultural identity of the area is being obliterated and its economic stability is being destroyed. Idaho needs to be in control of its future.

JEFF SHIPPY

Jeff Shippy agreed with **Mr. Domingo**. He was born in the area and has worked in the woods for 28 years. He has seen the ups and downs of the timber industry and what it does for the area. He said that as a pilot he has flown up and down the St. Joe River and seen the Forest Service timber that is supposed to be managed for the citizens of Idaho being wasted. In his opinion, the state can do a much better job managing that land than the federal government is doing. He said that politicians from outside of Idaho do not know how to manage our lands.

GARY YERGLER

Gary Yergler was in the lumber business or in the woods most of his life until the federal government stopped logging in the early 1990s and the state land ran out of timber. He has worked with both federal land sales and state land sales and in his opinion, the state land managers treat the land much better. He agreed that the federal government is putting up gates and signs that

affect Idaho citizen's access to the land. He urged the Legislature to keep this committee in place to continue to work on this important issue.

LARRY YERGLER

Larry Yergler, Shoshone County Commissioner, spoke about why Idaho should take back the federal lands. He stated that Shoshone County was once one of the richest counties in the state and our schools had unlimited budgets. Today those schools struggle with budgets, have trouble maintaining buildings and continue to decline in population. He said that young people are leaving because there are no job opportunities. **Mr. Yergler** stated that 74% of Shoshone County is national forest and used to produce close to 80 million board feet of timber annually. He said that today the county struggles to harvest any timber, access to the forest is locked up, forest health is deteriorating and the communities are dying.

Mr. Yergler went on to discuss the Forest Service process of revising the current Idaho Panhandle National Forest Plan. The county objected to the fact that the Forest Service did not coordinate with the local government under NEPA requirements and had an objection hearing on April 29 with Deputy Forest Service Chief James Pena. **Mr. Pena** had insisted it would be an open and transparent process. He appeared to listen and at the hearing implied that counties and local government must be coordinated. According to **Mr. Yergler** the county received a letter stating he would have his decision in approximately 30 days. He explained also that **Mr. Pena** was reassigned about one month ago and replaced by a new reviewing officer, Gregory Smith. As of this date, Shoshone County has not officially received notice of a final decision even though it is posted on the Forest Service's website. **Mr. Yergler** said that his first knowledge of this final decision was from a reporter who phoned wishing to discuss his opinion on the decision. **Mr. Yergler** does not feel that this has been open and transparent and said that **Mr. Smith** indicates federal government supremacy and regional forester coordination were satisfied. In **Mr. Yergler's** opinion, this first ever objection process leaves the perception that the Forest Service possibly did not like the decision from one officer so they changed to a new reviewing officer to accomplish their decision.

He emphasized that this plan will cause even further harm to Shoshone County economically, greater harm to the forest health and bring forward the wilderness proposals that were strongly objected to by all five northern counties. He reiterated that the plan did not consider the input from local government. **Mr. Yergler** urged that it is time to get out from under the yoke of the federal government and be leaders and step up to make a difference for the citizens of Shoshone County and for the citizens of Idaho.

CHERYL HALVERSON

Cheryl Halverson said that she agreed with a lot of what had been said. **Ms. Halverson** stated that the state of Idaho must manage its land for maintaining revenue for Idaho schools and public buildings both by constitutional mandate and under the terms of the Act of Statehood. Federal lands are managed for multiple reasons which include timber harvest, multiple types of recreation including hunting, wildlife and watershed protection as well as wilderness protection with public access looming large in the mix. As a result, the management styles do not and cannot correlate and therefore it is impossible to judge which is the most effective manager.

She went on to say that critics of the federal land managers base most of their arguments on money. She said those critics do not realize that the roads and improvements that the federal forest service puts in place, which make timber sales possible, cost money. In fact, data suggests that timber sales cost more than they return to the public coffers.

Ms. Halverson said that it has been estimated that transferring federal land to the state of Idaho could cost our state taxpayers up to \$1.5 billion over 10 years. And it would lose almost 2,500 federal jobs (and who knows how many indirect jobs) thus weakening our tax base.

She stated that the ability to get "out there" is a integral part of the Idaho experience. It's an integral part of the western experience. It is what makes us unique. If Idaho must by law manage its land for the greatest revenue stream, then when costs escalate the state will be forced to liquidate some or most of its holdings. This will directly impact public access.

She went on to say that many fellow Idahoans base their income directly or indirectly on this access to public lands. Because of mechanization there are fewer and fewer logging jobs but there are more and more jobs in the recreation industries. And access to public lands is one reason the area retains those young people that do stay. It is one of the few things Idaho has that attracts new residents to our state. In **Ms. Halverson's** opinion, if Idaho loses the public in public lands, it will lose its heritage.

She also reminded everyone that Montana has also looked at the opportunity to get state control of federal lands and has realized the state cannot afford such a transfer.

ALBERT HALVERSON

Albert Halverson stated that lands granted to Idaho when it became a state in 1889 were clearly spelled out in the Idaho Admission Act. It addressed the needs of education, prisons, mental health and the courts. Section 12 states "That the State of Idaho shall not be entitled to any further or other grants of land than as expressly provided in this act." He said that the current stated administration has a record of going back on agreements and breaking promises, but their plan to "take" federal lands is prohibited by the federal law that made us a state.

In his opinion, the "taker's" plan to take control of federal lands is a flawed plan that has not been thought through and would have all kinds of unintended consequences. It would in the end cause hardship to the citizens of Idaho. According to **Mr. Halverson**, these "takers" have pushed for cuts in spending that have crippled the forest service and other agencies who manage federal lands. Currently, Idaho's congressional delegation is plotting to exchange cutover lands for prime timber lands via the Upper Lochsa Land Exchange even though the vast majority of Idahoans have rejected the idea and a grassroots groundswell rose up to question the benefit of the exchange.

Mr. Halverson stated that unintended consequences of this plan would negate any of the benefits and end up costing most Idahoans while benefiting only a few. He said that the plan is contrary to the law of the land and it is foolish throwing good money after bad.

SANDY PODSAID

Sandy Podsaid has been an outfitter and guide for many years. He agreed with **Mr. Yergler** regarding the Forest Service's decision on the objection raised by Shoshone County. He read from the objection response: "In short the statute governing the Forest Service planning or implementing regulations provides for more than an advisory role for state and local governments. In the end the Forest Service retains discretion and supremacy for forest planning and use decisions." **Mr. Podsaid** stated that Idahoans need to have more input in these decisions. He added that the document also contains wording that says "nonetheless government agencies provide a distinct and vital perspective that is not diminished by the fact that their views are advisory rather than decisional. It is Forest Service policy to facilitate and encourage local involvement so that their views may be appropriately considered in the decisions."

Mr. Podsaid noted that the environmental impact statement in the plan is incomplete. It does not account for the economic losses the counties have taken for years.

PAM SECORD

Pam Secord commented that some liberal groups argue that the state cannot do anything against the federal government. She noted that her private forest is very alive with creatures and vegetation but when she goes to the federal forest, there is nothing. She said that forest is dying. In her opinion, the state can take the federal land back. She urged Idaho to join with the 11 other states that are moving in this direction and not to take no for an answer. She said that the federal

government is in breach of its contract with the states. According to **Ms. Secord**, the state is setting up for a fire comparable to the 1910 fire and with all of the roads the federal government has blocked, it will be hard to fight such a fire.

WES GOLDWIN

Wes Goldwin, a lifelong resident of Benewah County, said he drives the backwoods of Idaho and sees the national forest dying. He said there is no attempt by the federal government to salvage any areas where fires have burned. He made a trip through northern Idaho and said he only saw three logging trucks the entire time.

JOHN FERRIS

John Ferris agreed that the Forest Service is gating off roads making access much more difficult for citizens of Idaho and this also makes fighting fires much more difficult.

He explained that property tax roles show private landownership as fee simple ownership with a name and address. When the Forest Service owns the land it just say U.S. There is no attempt to show who actually owns that land. State land ownership is more definitive due to the endowment lands.

As a forester, he tried to managed tree farms below Forest Service land. He said it was impossible to do this because of the disease and insects that came over to his trees from the federal land. He also agreed with **Ms. Secord**.

WILLIAM SHIELDS

William Shields commented that in his lifetime he has learned that management is never done correctly when done from afar. He said this is what the Forest Service is trying to do. The Forest Service employees in Idaho cannot do anything unless the people from Washington, D.C., tell them it is okay. In his opinion, if the forest is treated as a crop and harvested and replanted (even if the land is clear-cut) the trees grow back and the deer and elk return. He noted that deer and elk cannot live in the deep forest, there is nothing there for them to eat and the terrain is too difficult to manage. He said that Idaho needs to get the land back, even if it requires some type of compromise.

SUSIE PATTERSON

Susie Patterson agreed with what had been said. She said that Idaho needs to better manage the land and who better to do that than the people who live in the communities. It is important to be able to pass this legacy down to the next generation. Idahoans can better manage the land because Idahoans want the land to be sustainable. She compared the federal government's owning of Del Norte County, California, to what could happen in Idaho. She does not want that to happen and said the state needs to get the land back.

PHIL LAMBERT

Phil Lambert, Benewah County Commissioner, said that his county is resource-based with agriculture on the west and timber on the east. There are four large sawmills that produce a lot of wood products. He said that since the area cannot get any timber from federal lands and due to the fact that log prices are up due to the housing industry, the sawmills are burning through a tremendous amount of private timber every year. He said there is a large amount of clear-cutting. **Mr. Lambert** emphasized that once that timber is gone and they are unable to get federal timber, the sawmills will shut down causing the county to lose its economy.

He has heard the term ecosystem management from the Forest Service, not timber management and to him this means that the Forest Service does not care about providing jobs for the local economy. **Mr. Lambert** said that his county has a natural resources group that is trying to give input into the Panhandle National Forest Plan and the federal government seems to fight them every step of the way. In conferences he has attended throughout the state, one common denominator

seems to be that any county in Idaho that has large amounts of federal land has the issue of how to keep their economies going.

DICK HARWOOD

Dick Harwood, former state representative, encouraged everyone not to be afraid to take on the federal government. He said this has been done before and can be done again. He said there is a very good chance if Idaho joins with the other states that are looking at this issue. He stated that there are a lot of assets in the forest that the state cannot get to. He prompted the committee to "get 'er done!"

DALE HAWKINS

Dale Hawkins, moved to Idaho from Nevada and said that Nevada has given their lands over to the federal government. In his opinion, there was also a lot of corruption involved. He is seeing this same thing happening in Idaho. He left Nevada for Idaho because of the natural resources it has. He agreed that if the state could access the assets in the forest, it would bring in a lot of money and jobs. He said that owning land in Idaho just for the purpose of owning it is not something the federal government can do. He said the state needs to get the land back.

Someone commented that a trail closure case has been elevated to the Federal Ninth District Court in Seattle on October 7. He said that a lot of money has been expended by Shoshone County for this case and thought the committee might be interested.

Rachelle Johnson stated that the citizens are watching the voting records of the committee members and if action is not taken, they will be voted out of office. This is a very serious issue in this area.

In response to a question from an audience member about committee member's stand on this issue, **Senator Winder** explained that the committee was in the community to listen to citizen's comments and concerns. He noted that the committee wants to do what is right for the citizens of Idaho and that there are no better experts to listen to than those in the communities who live with this every day. The committee plans to do everything it can to help the process. He added that this issue is something that the state will have to fight for.

Ms. Patterson asked whether committee members would be attending the summit in October and **Senator Winder** said some would be attending but the committee will be holding hearings on this issue in other parts of the state at that same time.

The meeting was adjourned at 8:30 p.m.